

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

IVAN L. MENDEZ, ) 4:12CV3055  
 )  
 Plaintiff, )  
 )  
 v. ) **MEMORANDUM  
 AND ORDER**  
 )  
 THE UNITED STATES OF )  
 AMERICA, et al., )  
 )  
 Defendants. )

This matter is before the court on its own motion. On July 18, 2012, the court dismissed Plaintiff's Complaint without prejudice. (Filing Nos. [9](#) and [10](#).) On September 20, 2012, Plaintiff filed a Notice of Appeal. (Filing No. [11](#).)

Federal Rule of Appellate Procedure 4(a)(1) requires that the notice of appeal in a civil case be filed within thirty days after the judgment or order appealed from is entered. "A timely notice of appeal is both mandatory and jurisdictional." Burgs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 (8th Cir. 1996). Moreover, an untimely notice of appeal cannot serve as a motion for extension of time to file appeal. Id. However, the district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause. Fed. R. App. P. 4(a)(5)(A)(ii).

Plaintiff filed his Notice of Appeal more than 30 days after the court's July 18, 2012, Memorandum and Order. (*See* Docket Sheet.) Moreover, Plaintiff did not move to extend the time to file a notice of appeal in this matter. (*Id.*) However, on the court's own motion, Plaintiff shall have until October 22, 2012, to file an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit, Plaintiff's appeal will not be processed.

IT IS THEREFORE ORDERED that:

1. Plaintiff shall have until October 22, 2012, to submit an affidavit to show excusable neglect or good cause for failing to file a timely notice of appeal. If Plaintiff fails to submit such an affidavit by October 22, 2012, Plaintiff's appeal will not be processed.
2. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: Check for affidavit on October 22, 2012.

DATED this 25<sup>th</sup> day of September, 2012.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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